IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.483 OF 2004
IN
WRIT PETITION NO.4596 OF 2004

The Chief Officer,
Ratnagiri Municipal Council — Appellant
vs.
Pandharinath Ganpat Salvi — Respondent

Mr.K.S.Bapat i/b. Mr.S.M.Railkar for the appellant.

Mr.M.S.Topkar for the respondent.

CORAM : R. M. LODHA &
R. S. MOHITE,JJ.

DATED : 5th April 2005

P.C.

Heard Mr.K.S.Bapat, the learned counsel for the appellant.

2. We hardly find any substance in the submission of the learned counsel for the appellant that the posts were not sanctioned by the Director of Municipal Administration and, therefore, there was no question of making the present respondent permanent and, therefore, the appellant could not have been held to have indulged in unfair labour practice.

3. The fact of the matter is that the complainants (present respondent is one of them) have been in employment of the appellant for years together and had

completed 240 days of continuous service each year. As a matter of fact no prompt action was taken concerning their permanency. Later on the appellant did send the proposal to the Director, Municipal Administration for sanction of 64 permanent posts on 18th January 2001 and 55 posts were sanctioned by the Director of Municipal Administration observing that all the employees mentioned in the list to whom the sanction was given for making them permanent were working with the present appellant prior to 10th March 1993. The present respondent was one of them. As a matter of law, the present appellant ought to have forwarded the proposal to the Director of Municipal Administration once the said employee completed 240 days of the continued service in a year. The very fact that the present appellant continued to engage the services of the complainants for years together on daily wages speaks of unfairness and unfair labour practice. Keeping the respondent on daily wages for years together and denying him the right of permanency, though he was entitled, is nothing but an unfair labour practice under the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practice Act, 1971 and covered by items 6, 9 and 10 of Schedule IV.

4. The learned counsel for the appellant placed reliance on the judgment of the Supreme Court in the

case of Mahatma Phule Agricultural University & ors. v. Nashik Zilla Sheti Kamgar Union & ors., 2001 III CLR 4.

5. The aforesaid judgment of the Supreme Court cannot be applied to the facts of the present case inasmuch as here the Director of Municipal Administration has already directed the appellant to make respondent permanent. Obviously the respondent has to be made permanent as lineman/pump operator and not as coolie since he was working as lineman/pump operator prior to 10th March 1993.

6. All in all, we find that consideration of matter by the Industrial Tribunal and by the learned Single Judge do not suffer from any legal infirmity.

7. Letters Patent Appeal has no merit and is dismissed in limine.

(R.M. LODHA,J.)

(R.S. MOHITE,J.)